Neutral Citation Number: [2021] EWHC 3386 (Ch)

Case No: BL-2021-BRS-000008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 15 December 2021

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

RUPERT ST JOHN WEBSTER	**Claimant**
- and -	
(1) JOHN FRANCIS PENLEY	**Defendants**
(2) WINTERBOTHAM SMITH PENLEY LLP	

- -
- -

The Claimant in person
Oliver Wooding (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Defendants**

Hearing date: 2 December 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

Introduction

1. This is my judgment on an application by notice dated 2 August 2021 on behalf of the defendants, for an order striking out the claimant's claim or giving summary judgment against the claimant. The application is made in the context of a claim for professional negligence made by claim form issued in February 2021 by the claimant against the defendants as solicitors to his grandparents, both now long deceased.

2. The hearing of the application, on 2 December 2021, followed an application by an undated notice, sealed on 25 November 2021, on behalf of the claimant, for an order to vacate the hearing on the basis that the claimant's preferred counsel was not available to appear at it. I dealt with that application on paper, and on 29 November handed down a written judgment under neutral citation [2021] EWHC 3198 (Ch), refusing to adjourn the hearing. The claimant made an application to the Court of Appeal for permission to appeal against my decision, but on 1 December 2021 Asplin LJ refused permission to appeal and also refused to adjourn the hearing. It therefore proceeded with the claimant representing himself. He produced a 10 page skeleton argument which was sent to the court late on the evening before the hearing, and which I read the next morning before sitting.

Background

Earlier background

3. Although the present claim was issued only this year, the claimant has been engaged in related litigation for more than ten years now, and it is necessary to set out some of the history in order to put the present application in context. I can take some of the background from my own decision in a case called *Ashcroft and Penley v Webster* [2017] EWHC 887 (Ch). This was a case in which the present claimant was the defendant, and the present first defendant was the second claimant. In that case I decided to extend the life of an extended civil restraint order made against the present claimant on 23 March 2015 by HHJ McCahill QC for another two years.

4. The relevant background from my earlier decision is as follows:

> "2. Captain Antony Webster and his wife Valerie had four children. There were two sons and two daughters. Valentine was the elder son and Rory was the younger. Virginia (later Ashcroft, the First Claimant) and Antonia (later Sloane) were the two daughters. Valentine married Jennifer, and they had three children, Rupert (the Defendant [now the present claimant]), Letitia and Arabella. Rupert married Jane, and they have three children, Beatrice, Roselle and Luke.
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> 3. In 1950 Captain Webster acquired the property in the village of Ash Priors, Taunton, known as Priory Farm, consisting of some 44 acres including eight cottages. In 1965 two of these cottages were sold to Valerie. She later sold a half share to Rory. In 1987 Captain Webster transferred another three cottages to Valerie. In 1990 part of the estate known as Priory Barn was sold to a company belonging to Valentine.

4. Meanwhile, in 1971 Valerie purchased a nearby property known as Monks Walk. She sold most of it to Valentine in 1972, and gave him the rest in 1990. Valentine attempted to develop the Barn, using Monks Walk as security, but ran into financial difficulties. In 1992 the mortgagee took possession of Monks Walk, and sold it.

5. In April 1992 Captain Webster transferred the farmhouse and two fields out of the Priory Farm estate to himself and Valerie as tenants in common. Three weeks later, Captain Webster transferred the remaining agricultural land and certain cottages to Valerie. Two days later, Valerie created a discretionary trust of that land and cottages, of which her four children were discretionary objects.[1] This was all part of a tax planning exercise, carried out on the advice of Bevirs solicitors, assisted by the Second Claimant, Mr Penley [now the first defendant], the family solicitor (not from Bevirs).

6. In December 1992, Valentine became bankrupt. Other members of the family became bankrupt later. In October 1995 Priory Barn was repossessed and sold by the mortgagee. Valentine and Jennifer moved into the farmhouse, The Priory. In February 1996, Captain Webster died, and probate of his will was granted to Virginia and Mr Penley, the Claimants, in May 1996. His will operated on his 50% interest in the farmhouse and two fields, and created a nil rate discretionary trust for the benefit of Valerie and his issue, with a small legacy to Virginia and the residue going to Valerie. She died in August 2007, and the Claimants became personal representatives of her estate also. Valentine had unfortunately died the year before, in September 2006, aged only 64, and his son Rupert, the Defendant, became personal representative of his estate.

7. After the death of his father, Valentine, in 2006, and of his grandmother in 2007, Rupert, as personal representative of his father's estate, sought to make a claim in proprietary estoppel against his grandparents' estates. The claim was issued in 2009. It was based on various alleged representations or promises made over the years, but apparently starting in the 1970s, by both Captain Webster and his wife Valerie, to the effect that The Priory would come to Valentine.

8. This claim was issued primarily against Virginia and Mr Penley (the Claimants in these proceedings), although Jennifer, Rory and Antonia were also joined as defendants. Ultimately it was taken to trial, when Rupert (as claimant) and Virginia and Mr Penley (as defendants) were represented by counsel, and the other defendants appeared in person.

9. The claim was dismissed by HHJ Purle QC in a written judgment handed down 22 May 2013. He said, in summary:

> "23. … In my judgment, no representation or promise to the effect suggested by Rupert was ever made. Nor, if I am wrong about that, was there detrimental reliance."

10. The judge also said this:

[1] This statement is unfortunately incorrect. I now understand that the trusts were not discretionary, but equal protective life interests with remainders over, but nothing turns on this here.

> "28. … What did emerge very clearly from the evidence, however, was the fact that Valentine held the strong conviction that as the eldest son he was entitled at least morally to control and (ultimately) inherit The Priory as his birthright. That conviction was not, however, shared by other family members, and Valentine knew this. During the course of the tax planning exercise undertaken in 1992, Valentine's conviction was expressly rejected by Valerie at a family meeting in the presence of solicitors (fully minuted) on 25 February 1992. Notably, Valentine did not rely upon any representation or promise at this stage, only a conviction of his prior entitlement as the first born son.
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> 29. That said, there is little doubt that the hope was expressed from time to time, in different ways, especially by Valerie, that Valentine might inherit or live at Ash Priors, or the farmhouse. But there was nothing amounting to a commitment to ensure that any part of Ash Priors, or the farmhouse, or the two fields, would become his. Moreover, after the 1992 tax planning exercise, Mr Penley was very much against the taking any step that might imperil the tax efficiency of the structure he had helped to put in place, and his advice was heeded."

11. The Defendant having lost at first instance, and having been refused permission to appeal by the judge, he applied on paper for permission to appeal to the Court of Appeal. On 31 October 2013, Lord Justice Lewison refused permission to appeal. The Defendant sought to renew his application at an oral hearing before Lord Justice Floyd on 13 February 2014. Lord Justice Floyd also refused permission to appeal.

12. The Defendant sought to protect his position in the pending litigation by means of entries dated 6 March 2012 in the register of pending land actions, to which he later added two further entries dated 3 September 2013, and then two entries dated 24 February 2014 in the register of land charges to protect claimed substantive rights, all registered against the property in the Land Charges Registry, it being unregistered land. In May 2014, after the original claim had been dismissed and all appeals exhausted, the Claimants applied by notice to vacate those land charges. Sitting then in the Chancery Division of the High Court as a deputy master, I acceded to that application in August 2014, and vacated all six charges.

13. The Defendant then brought a new claim (A00TA241) against the Claimants in September 2014 in the County Court at Taunton, seeking possession of a part of the property at Ash Priors, on the basis that he had a right, whether through his mother Jennifer, pursuant to the estate of his father Valentine, as a member of a class of objects under a discretionary trust, or under a statutory tenancy or licence, to occupy that part of the property. Parts of the claim were then struck out as totally without merit by Deputy District Judge Orme, sitting at Taunton. The remainder of the matter was transferred to Bristol, where on 23 March 2015 HHJ McCahill QC struck out the remainder, also as totally without merit.

15. The Claimants then brought a claim (B30BS071) against the Defendant in early 2015 in trespass and slander of title. On 23 March 2015 HHJ McCahill QC granted a final injunction against the Defendant, requiring him not to enter the

> property, not to interfere with or prevent the marketing or sale of it, not to make any entry on the title of the property without the permission of the court, and not to publish or use words to the effect that he had an interest in The Priory or that his permission was required before its disposal or that the registered owners were not freehold owners of the property and/or that the trustees did not have the power to give instructions as to the disposition of the property.
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> 16. The Defendant in the meantime brought a new claim (B30BS107) against the Claimants in the Bristol District Registry. This was treated as effectively an application being made by the Defendant to vary the injunction granted in claim number B30BS071. It was struck out by HHJ McCahill QC on 23 March 2015."

5. Before I go on, for the sake of clarity I need to mention one procedural matter which was not referred to in the chronology in my judgment above, but *is* referred to later on in this judgment. This relates to the dispute about Valerie Webster's wills after she died in 2007. The first defendant and Virginia Ashcroft sought to prove a will dated 2006. The current claimant, Mr Webster, wished to propound an earlier will dated 2000. He placed a caveat on the later will. The first defendant and Mrs Ashcroft summonsed Mr Webster, in order to clear the way to proving the later will. The matter was dealt with by DJ Million in the Principal Registry of the Family Division of the High Court on 24 March 2009. He ordered that, if Mr Webster did not commence probate proceedings to propound the 2000 will by 11 May 2009, his caveat would cease to have effect. Accordingly, Mr Webster brought his probate claim against the first defendant and Mrs Ashcroft, but also against his mother (Jennifer) and his other aunt (Antonia) and uncle (Rory). It was this claim which *included* the proprietary estoppel claim referred to at paragraph 7 of the quotation above. The claim to propound the 2000 will also failed, and HHJ Purle QC ordered that the 2006 will be admitted to probate in solemn form.

Later background

6. I can take the next part of the history from my judgment in the adjournment application which I dismissed on 29 November 2021:

> "4. It was in these circumstances that HHJ McCahill QC on his own initiative made an extended civil restraint order ("ECRO") against Mr Webster (then the defendant, now the claimant), restraining him until 22 March 2017 from issuing any claim or application against Mrs Ashcroft or Mr Penley (in their capacity as executors of the estate of Valerie and trustees of the will of Captain Webster), except for any personal claim that he might bring in professional negligence as a disappointed beneficiary or otherwise. I mention now that, on 28 September 2015, Lord Justice Lewison on the papers refused permission for the Defendant to appeal against the decision of HHJ McCahill QC of 23 March 2015, recording that the appeal was totally without merit.
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> 5. However, before the extended civil restraint order was made in March 2015, Mr Webster had also issued three further claims against Mr Penley alone, under claim numbers HC14B01306, HC14C01307, and HC14D01309. Each claim sought to challenge the valuation of the estate of (respectively) Valentine, Valerie and Captain Webster. On 11 June 2015 Mr Justice Birss struck out all three claims, recording that each was totally without merit. The judge made a (second)

extended civil restraint order against the Defendant. On 17 December 2015 Lord Justice Floyd on the papers refused permission for the Defendant to appeal the decision of Mr Justice Birss of 11 June 2015. On 17 November 2016 Lord Justice Patten refused a renewed (oral) application for permission to appeal the decision of Mr Justice Birss. He recorded in his judgment that an appeal would be totally without merit.

6. On 21 April 2017, I extended the life of the ECRO of HHJ McCahill QC for two years, to expire on 22 March 2019.

7. I referred above to the fact that in 2014, when I was a deputy master, I made an order vacating certain entries in the land charges registry. On 5 August 2020, an appellant's notice from Mr Webster was sealed by the Business & Property Courts in London. This sought to appeal against my order of 4 August 2014. On 3 November 2020 Mr Justice Adam Johnson refused on paper to extend time for filing the notice for the six years necessary. On 11 November Mr Webster sought an oral hearing. This was listed for 10 February 2021 before Mr Justice Morgan, when Mr Webster appeared before him personally. Mr Justice Morgan gave an extempore judgment, dismissing the application for an extension of time, certifying that the application was totally without merit, and making a further ECRO (the third) against Mr Webster, for two years.

8. However, on 9 February 2021, the day before the third ECRO, Mr Webster had issued the claim form in these proceedings to make the present 'claim in professional negligence' against the present defendants. Detailed particulars of claim were attached to the claim form, which was issued in the High Court in London. The particulars were not signed by counsel, and I infer that Mr Webster prepared them himself.

9. The particulars alleged negligence by the defendants (inter alia) in (i) giving estate planning advice to the claimant's father's parents in 1992, (ii) preparing wills for each of them and two family trusts, (iii) estate administration after the deaths of each such grandparent (in 1996 and 2007 respectively), (iv) giving further advice in 2001, (v) procuring in 2006 the revocation of his grandmother's will of 2000 by making a new one, (vi) failing to remain neutral with respect to the claimant's own family, (vii) and breach of contract by the second defendant in July 2014. As I have already said, the claimant's father died in 2006. The claimant claims damages in excess of £5 million.

10. On 9 March 2021 Chief Master Marsh made an order transferring the claim to the Business and Property Courts in Bristol. The defence of both defendants was filed on 2 July 2021. By their defence the defendants plead that 'Any claim in negligence arising out of any act before 9 February 2006 is accordingly barred for limitation pursuant to s. 14B Limitation Act 1980.' They say that 'paragraphs 8 to 20 should be struck out accordingly'. In any event it is denied both that that the defendants were negligent, and also that they owed any duty to the claimant. Many of the factual allegations made are denied, it is denied that the claimant is entitled to sue in respect of any losses caused to members of his family other than himself, and other parts of the case are said to amount to an abuse of process as a collateral attack on earlier judicial decisions."

7. I should record here that, following the service of the defence, the claimant did not serve any reply in response to the defence by the time of filing the directions questionnaire (see CPR rule 15.8). In particular, therefore, he did not plead any facts relied on to resist the defendants' claim to the benefit of the provisions of the Limitation Act 1980. I should also mention in passing that the claimant has filed an appellant's notice to appeal against the decision of Mr Justice Morgan of 10 February 2021. So far as I am aware, the Court of Appeal has not yet decided whether or not to give permission to appeal.

This application

8. As I have already said, on 2 August 2021 the present defendants made an application for an order striking out the claimant's claim or giving summary judgment against the claimant. The application is supported by witness statements from the first defendant himself, and from Catherine Green on behalf of the second defendant (though Ms Green simply confirms what the first defendant says, and adds nothing further). The claimant has not made any witness statement in opposition to the application. In making their application, the defendants rely on both the principles of abuse of process and the principles of limitation under the Limitation Act 1980. In relation to a number of the paragraphs in the particulars of claim, it is also submitted that no sufficient cause of action is pleaded, or that reverse summary judgment should be given.

Relevant procedural rules

9. The relevant procedural rules governing the present application are contained in CPR rules 3.4 and 24.1. The court's jurisdiction to strike out arises under CPR rule 3.4:

> "(2) The court may strike out a statement of case if it appears to the court—
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

10. In addition, CPR Practice Direction 3A relevantly provides:

> "1.4 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
>
> (1) those which set out no facts indicating what the claim is about, for example 'Money owed £5,000',
>
> (2) those which are incoherent and make no sense,
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.

> 1.5 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded."

11. The court's jurisdiction to give summary judgment (either against the defendant in favour of the claimant, or vice versa) arises under CPR rule 24.2, which relevantly provides:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—
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> (a) it considers that—
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
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> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
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> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

In this connection, it is well established that, on an application for summary judgment, the burden of proof rests on the applicant: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [9].

Principles on which the court acts

12. So far as concerns the principles governing the jurisdiction of the court under these rules, I can take the following summary from a recent decision of my own, *Bank of Scotland plc v Hoskins* [2021] EWHC 3038 (Ch). This was also an application for an order striking out a (counter)claim or awarding reverse summary judgment. In that case I said this:

> "14. This being an application to strike out or alternatively for summary judgment, it is important to be clear what the court's role in such a case is. There was little or no difference between the parties on this point. So far as concerns striking out, I was referred to the recent decision of Roger ter Haar QC in *Benyatov v Credit Suisse Securities (Europe) Ltd* [2020] EWHC 85 (QB). There the judge said:
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> '57. As a preliminary matter, the Court of Appeal explained in *Partco Group Ltd v Wragg* [2002] EWCA Civ 594 at [28] that:
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> "If an application involves prolonged serious argument, the court should, as a rule, decline to proceed to the argument unless it harbours doubt about the soundness of the statement of case and is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of the trial itself".
>
> […]
>
> *No reasonable grounds for bringing the claim*

60. The following principles are relevant to this head of CPR 3.4(2):

(1) In *Biguzzi v Rank Leisure Plc* [1999] 1 WLR 1926 at 1932-1933 *per* Lord Woolf MR, the Court of Appeal referred to strike out as a "draconian" step: the striking out of a valid claim should only be taken as a last resort.

(2) In a strike-out application the proportionality of the sanction is very much in issue; see *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607 at [44].

(3) If the Court is able to say that a case is "unwinnable" such that continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides it may be struck out: see *Harris v Bolt Burdon* [2000] CP Rep 70; [2000] CPLR 9 at [27].

(4) An application to strike out the claim should not be granted where there are significant disputes of fact between the parties going to the existence and scope of an alleged duty of care unless the court is "*certain*" (emphasis in original) that the claim is bound to fail: see *Hughes v Colin Richards & Co* [2004] EWCA Civ 266; [2004] PNLR 35 at [22].

(5) Where "the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition), or is in any way sensitive to the facts, an order to strike out should not be made": per Sir Thomas Bingham in *E (A Minor) v Dorset CC* [1995] 2 AC 633 at 694B.

(6) It is not appropriate to strike out a claim in an area of developing jurisprudence, since, in such areas, decisions as to novel points of law should be based on actual findings of fact: see *Farah v British Airways*, The Times, 26 January 2000, CA at [42] referring to *Barrett v Enfield BC* [2001] AC 550 (see 557) and *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at page 741.

(7) A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence: see *Bridgeman v McAlpine-Brown* 19 January 2000, unrep (CA) at [24].

Abuse of process or otherwise likely to obstruct just disposal

61. Paragraph 3.4.3 of the White Book 2019 says:

‘Although the term "abuse of the court's process" is not defined in the rules or practice direction, it has been explained in another context as "using that process for a purpose or in a way significantly different from its ordinary and proper use" (*Attorney General v Barker* [2000] 1 FLR 759, DC, per Lord Bingham of Cornhill, Lord Chief Justice).’

> 62. Examples of abuse of process arguments are given in paragraph 3.4.3 of the White Book 2019, but none of them have any relevance to the present case, for example where litigation is conducted in a manner designed to undermine the object of a fair trial (such as relying on forged documents and perjured evidence), or where matters are already *res judicata*, or the claim involves a collateral attack on a previous decision or is of such limited value to the Claimant that 'the game is not worth the candle'. None of these have any relevance to the present case."

15. So far as concerns summary judgment, I was referred to the well-known decision of Lewison J (in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch)) as well as that of Mr ter Haar QC in *Benyatov*. Both of these cases concerned applications by defendants for summary judgment against claimants. This corresponds to the present case, where the claimant is applying for summary judgment against the defendant in respect of his counterclaim. I was also referred to dicta of Lord Collins of Mapesbury, giving the advice of the Privy Council in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2021] 1 WLR 1804. It will be sufficient to make some relevant citations from these cases.

16. In *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch), Lewison J said:

> "15. As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:
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> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
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> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
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> iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*
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> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
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> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
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> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the

court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

17. In *Benyatov v Credit Suisse Securities (Europe) Ltd* [2020] EWHC 85 (QB), Mr ter Haar QC summarised much of this, and said:

"50. The Court of Appeal confirmed in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098; [2010] Lloyd's Rep IR 301 at [24] that the proper approach to be taken by the Court on summary judgment application is conveniently summarised by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. Relevant considerations include the following:

(1) The court must consider whether the claimant has a '*realistic'* as opposed to a '*fanciful'* prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

(2) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

(3) In reaching its conclusion the Court must not conduct a 'mini-trial': *Swain v Hillman*;

(4) In reaching its conclusion the Court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;

> (5) If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the Court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success.
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> 51. Complex claims, cases relying on complex inferences of fact, and cases with issues involving mixed questions of law and fact where the law is complex are likely to be inappropriate for summary judgment: see *Three Rivers District Council v Bank of England (No. 3)* [2003] 2 AC 1 (HL) at [95] *per* Lord Hope. A trial 'can often produce unexpected insights' and 'a judge will often find that his first impression of a case, when reading into it, is not the same as his final conclusion': see *Playboy Club London Ltd v Banca Nazionale del Lavora SpA* [2019] EWHC 303 (Comm) at [26].
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> 52. Further, the general rule (which can be called the "*Altimo*" principle", based on *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804, see [84] and the authorities there cited) is that it is not normally appropriate in a summary procedure such as an application to strike out or for summary judgment to decide a controversial question of law in a developing area, particularly because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts. Further, a summary procedure ought not to be applied to an action involving serious investigation of ancient law and questions of general importance. Where the law is not settled but is in a state of development it is normally inappropriate to decide novel questions on hypothetical facts.
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> 53. Where disputed issues are such that their conclusion largely depends upon the expert evidence relied on by each side, an application for summary judgment will usually be inappropriate particularly where the exchange of experts' reports has not yet occurred and joint statements of the experts have not yet been produced: see *Hewes v West Hertfordshire Hospitals NHS Trust* [2018] EWHC 2715 (QB) [45]-[50].
>
> 54. When deciding whether the respondent has some real prospect of success the Court should not apply the standard which would be applicable at the trial, namely the balance of probabilities on the evidence presented: see *Royal Brompton Hospital NHS Trust v Hammond (No.5),* [2001] EWCA Civ 550 [18] and [82] *per* Aldous L.J. and [109] *per* Clarke L.J.. Indeed, 'nothing like a probability of success' is required: see *Playboy Club London Ltd v Banca Nazionale del Lavora SpA* [2019] EWHC 303 (Comm) at [13]."

18. The reference in the judgment of Mr ter Haar QC to the "*Altimo* principle" is to the following passage in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804, where Lord Collins said:

> "84. The general rule is that it is not normally appropriate in a summary procedure (such as an application to strike out or for summary judgment) to decide a controversial question of law in a developing area, particularly

> because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts: e.g. *Lonrho Plc v. Fayed* [1992] 1 A.C. 448, 469 (approving *Dyson v Att-Gen* [1911] 1 KB 410, 414: summary procedure 'ought not to be applied to an action involving serious investigation of ancient law and questions of general importance ...'); *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 741 ('Where the law is not settled but is in a state of development … it is normally inappropriate to decide novel questions on hypothetical facts'); *Barrett v Enfield London BC* [2001] 2 AC 550, 557 (strike out cases); *Home and Overseas Insurance Co. Ltd. v Mentor Insurance Co. (U.K.) Ltd.* [1990] 1 WLR 153 (summary judgment). In the context of interlocutory injunctions, in the famous case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, 407 it was held that the court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. It was no part of the court's function 'to decide difficult questions of law which call for detailed argument and mature consideration'."

19. So far as concerns the relationship between striking out and summary judgment, it is clear that an application under rule 3.4 is not one for summary judgment: see *eg Dellal v Dellal* [2015] EWHC 907 (Fam). It is generally concerned with matters of law or practice, rather than with the strength or weakness of the evidence. So on an application to strike out, the court usually approaches the question on the assumption (but it *is* only an assumption, for the sake of the argument) that the respondent will be able at the trial in due course to prove its factual allegations. On the other hand, on an application for summary judgment, the court is concerned to assess the strength of the case put forward: does the respondent's case get over the low threshold of "real prospect of success"? If it does not, then, unless there is some other compelling reason for a trial, the court will give summary judgment for the applicant. But, as stated, the court must not indulge in a mini-trial, and must make allowances for the fact that disclosure and cross-examination have not been available, as they would if the matter went to trial.

20. Nevertheless, there is an overlap between the two types of application. As Mr ter Haar QC explained in *Benyatov*,

> "63. A statement of case which discloses no reasonable grounds may also be an abuse of the court's process, and may also justify summary judgment. As seen from the above discussion of the relevant legal principles, there is no exact dividing line between strike out and summary judgment, and some similar considerations apply to both, although there are different considerations relevant to each."

13. On this last point, I also note that, at paragraph 3.4.21 of the White Book, the learned editors say this:

> "(1) Unlike Pt 24, r.3.4 also applies to cases of non-compliance with a rule, practice direction or court order;
>
> (2) Unlike r.3.4, Pt 24 also applies to the summary disposal of issues including preliminary issues;

> (3) There are various procedural requirements in Pt 24 which do not apply to r.3.4;
>
> (4) Unlike Pt 24, r.3.4 applies to all proceedings. Thus, an order akin to summary judgment may be obtained under r.3.4 in proceedings which are excluded from Pt 24…"

I respectfully agree.

14. One other point that I should mention at this stage is this. In certain circumstances at least, the court should give the maker of a defective pleading an opportunity to put it right before striking it out. In *Kim v Park* [2011] EWHC 1781 (QB), the master struck out a claim for libel in online newspaper articles because the claimant had not identified any person who had accessed the websites on which the words complained of had been published, and hence there was no evidence of publication, although during the hearing the claimant had told the master that the articles in question had been seen during the relevant period by an individual or individuals who had confirmed that they could be witnesses but that they were afraid of the defendant. The claimant subsequently sent to the master details of evidence of publication.

15. On appeal against the master's decision, Tugendhat J said:

> "40. However, where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right. In para 19 of his Judgment the Master recorded that the Claimant had informed him that he already had witnesses. On 17 January 2011 the Claimant demonstrated that that was not wishful thinking, or a bluff, by submitting the statements that he did submit.
>
> 41. In those circumstances I conclude that it was wrong in principle for the Master to strike out the claim without giving the Claimant an opportunity of rectifying the defect in his case. Accordingly this appeal will be allowed."

The particulars of claim

16. Before I can deal with the application itself, I need to set out the battleground. The structure of the particulars of claim is as follows. It contains 35 paragraphs in total, of which the first 6 are scene-setting. Paragraphs 7 and 8 deal with advice on estate planning given by a firm called Bevirs at a family meeting on 25 February 1992. It is alleged that Bevirs' advice was wrong but that the defendants "administered it anyway causing loss and damage to" the estate of Captain Antony Webster (the claimant's grandfather). Paragraph 8.3 alleges that the defendants would not claim agricultural property relief from inheritance tax on Captain Webster's estate and neither would they apply what is said to be the "protection" of the Trusts of Land and Appointment of Trustees Act 1996 for the benefit of the claimant's family. The failures were said in paragraph 8.4 to amount to fraud under sections 3 and 4 of the Fraud Act 2006.

17. Paragraphs 9 to 12 deal with the preparation of the wills of Captain Webster and his wife Valerie, a family trust, and an alleged "deal among beneficiaries on the future of his farm". It is said that Captain and Mrs Webster expressed mutual intentions including to confer successive life interests upon the claimant's father Valentine and the claimant himself, and to allow them to buy his house, known as The Priory. It is then further said that "the wills and trust produced by [the defendants] neglected [those] mutual intentions". It is finally said that the defendants having acted unreasonably could not invoke section 61 of the Trustee Act 1925.

18. Paragraph 13 pleads Captain Webster's death on 10 February 1996.

19. Paragraph 14 alleges that the defendants failed to ensure any deal among Captain Webster's issue, and falsely represented in July 1996 that life interests could not be created. Paragraph 15 alleges that in the same month the first defendant's father gave negligent advice to Mrs Valerie Webster in a letter. Paragraph 16 says that that advice misled Mrs Webster into revoking her 1992 will by making a new one in September 1998 (itself "revised" by a further will of November 2000), so that the "mutual aims" of Captain and Mrs Webster were not carried out. The particulars given under this paragraph include alleged encouragement of the claimant and his father "to expect to own 'The Priory' farmhouse…", and repeat the allegation of fraud in July 1996 by telling Mrs Webster that it was impossible to create life interests. In addition there is an allegation that the defendants' alleged "failure to carry out any instructions produced a conflict of interest".

20. Paragraph 17 is an allegation of reliance by the claimant on the alleged encouragement "to expect to own 'The Priory' farmhouse…".

21. Paragraphs 18 and 19 deal with an offer in July 2005 by the first defendant to retire as executor and trustee of Captain Webster's will, which was not implemented, even though the first defendant had allegedly lost the confidence of Mrs Webster and her children.

22. Paragraphs 20-22 and 24 deal with the attempt in 2005 by Mrs Webster to instruct another solicitor to prepare a codicil to her will and the preparation by the defendants of a further will of Mrs Webster dated 24 May 2006, revoking her will of 2000. This will had appointed the claimant's father as an executor and trustee, but the 2006 will appointed the first defendant instead, it is said on the basis that the claimant's father was then suffering from motor neurone disease. The claimant says that this was contrary to the United Nations Convention on the Rights of Persons with Disabilities. The claimant pleads an attempted revocation by Mrs Webster of the May 2006 will by a further will and letter in September 2006.

23. Paragraph 23 pleads the claimant's father's death on 16 September 2006, and paragraph 25 pleads the death of Mrs Webster in August 2007. The defendants admit both.

24. Paragraph 26 pleads that on 2 June 2008 the defendants wrote to the claimant's mother Jennifer "to confirm the inheritance position on Valerie's [the grandmother's] estate".

25. Paragraph 27 alleges that the defendants did not remain neutral, "by proactively litigating against the [claimant's] family…".

26. Paragraph 28 alleges a breach of the second defendant's contract of retainer on 22 July 2014 by completing Panel 12 in the Form FR1 relating to the registration of The Priory incorrectly, with alleged knowledge of the misstatement in question, namely that only the first defendant "is in actual possession of the property…". Paragraph 29 refers to this as a "fraudulent title registered at Land Registry".

27. Paragraph 29 goes on to allege that the defendants illegally seized the claimant's possessions and wrongfully evicted him and his children without consent or a court order, which it is said was an offence under the 1996 Act. Paragraph 30 alleges that the "illegally obtained title was used to obtain [the claimant's] wrongful arrest by the Police".

28. Paragraphs 31 and 32 deal with the possession proceedings brought (successfully) by the first defendant and Virginia Ashcroft against the claimant in respect of The Priory, and the later sale by them of the property to a third party.

29. Paragraph 33 alleges that the defendants "failed to take proper care in an application to the Home Office" for the exhumation of the claimant's father's remains from the property.

30. Paragraph 34 pleads that Virginia Ashcroft brought a claim against the first defendant which was not notified to the claimant, his mother or his children.

31. Paragraph 35 pleads the loss and damage allegedly suffered by the claimant and "the aforesaid St John Webster family".

The defence

Abuse of process

32. The defence, filed on 2 July 2021, denies relevant elements of the claims, including negligence, causation and the losses claimed. It also pleads at paragraph 6:

> "This claim is an abuse of the Court's process and yet a further collateral attack on a multiplicity of judgments relating to the Webster family, all of which are adverse to the Claimant, including but not limited to:
>
> a. Claim No. HC09C01570 ("the Original Claim") where by his order of 22 May 2013 HHJ Purle QC dismissed the Claimant's claims, as Valentine's personal representative, to an interest in The Priory by way of proprietary estoppel, and to challenge the validity of Valerie's last will dated 24 May 2006, which was pronounced for in solemn form;
>
> b. Claim No. A00TA241 ("the Possession Proceedings") whereby the Claimant sought possession of The Priory. The majority of the claim was struck out by DDJ Orme and the balance by HHJ McCahill QC, who recorded that the claim was totally without merit.

c. Claim No. B30BS071 ("the Trespass and Injunction Proceedings") whereby the First Defendant and Virginia, as the then legal owners of The Priory, obtained permanent injunctive relief against the Claimant's slander of their title and trespass on The Priory by order of HHJ McCahill QC dated 23 March 2015."

33. In this judgment, I shall use the expressions "the Original Claim", "the Possession Proceedings" and "the Trespass and Injunction Proceedings" in the same way, to refer to the three sets of proceedings referred to above respectively. One consequence of the claimant's lack of success in all the litigation in which he has been involved to date is that adverse costs orders have swallowed up all the interests to which he was entitled under the various wills and trusts. This has an impact on parts of the present application.

Limitation

34. Paragraph 7 of the defence goes on to say:

> "Without prejudice to the remainder of the Defence set out below, the claim was issued on 9 February 2021. Any claim in negligence arising out of any act before 9 February 2006 is accordingly barred for limitation pursuant to s. 14B Limitation Act 1980. The Defendants contend that insofar as they purport to allege negligence against the First and/or Second Defendants, then paragraphs 8 to 20 should be struck out accordingly."

35. The relevant provisions of the Limitation Act 1980 are as follows:

> "2. Time limit for actions founded on tort.
>
> An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.
>
> […]
>
> 5. Time limit for actions founded on simple contract.
>
> An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.
>
> […]
>
> [14A.— Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual.
>
> (1) This section applies to any action for damages for negligence, other than one to which section 11 of this Act applies, where the starting date for reckoning the period of limitation under subsection (4)(b) below falls after the date on which the cause of action accrued.
>
> (2) Section 2 of this Act shall not apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) below.

(4) That period is either—

(a) six years from the date on which the cause of action accrued; or

(b) three years from the starting date as defined by subsection (5) below, if that period expires later than the period mentioned in paragraph (a) above.

(5) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (4)(b) above is the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action.

(6) In subsection (5) above 'the knowledge required for bringing an action for damages in respect of the relevant damage' means knowledge both—

(a) of the material facts about the damage in respect of which damages are claimed; and

(b) of the other facts relevant to the current action mentioned in subsection (8) below.

(7) For the purposes of subsection (6)(a) above, the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(8) The other facts referred to in subsection (6)(b) above are—

(a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and

(b) the identity of the defendant; and

(c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(9) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (5) above.

(10) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.]

[14B.— Overriding time limit for negligence actions not involving personal injuries.

(1) An action for damages for negligence, other than one to which section 11 of this Act applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission—

(a) which is alleged to constitute negligence; and

(b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

(2) This section bars the right of action in a case to which subsection (1) above applies notwithstanding that—

(a) the cause of action has not yet accrued; or

(b) where section 14A of this Act applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in subsection (4)(b) of that section has not yet occurred;

before the end of the period of limitation prescribed by this section.]

[…]

21.— Time limit for actions in respect of trust property.

(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of subsection (1)(b) above to recover that property or its proceeds after the expiration of the period of limitation prescribed by this Act for bringing an

> action to recover trust property shall be limited to the excess over his proper share. This subsection only applies if the trustee acted honestly and reasonably in making the distribution.
>
> (3) Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued. For the purposes of this subsection, the right of action shall not be treated as having accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.
>
> (4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence."

36. As I have already said, no reply has been filed by the claimant, and accordingly, with one possible exception, no facts are pleaded which might engage the provisions of Part II of the Limitation Act 1980 to postpone or extend the relevant limitation periods. The one possible exception is that the claimant argues that his father's motor neurone disease constituted a "disability" for the purposes of sections 28 and 28A. However, and as was pointed out by Mr Wooding for the defendants, section 38(2) of the Act provides that:

> "For the purposes of this Act a person shall be treated as under a disability while he is an infant, or [lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings]."

It is clear therefore that a physical illness is not enough for this purpose, unless it deprives the person of capacity. The claimant accepted before me that that was not this case.

37. In one of the letters he wrote to the court after the hearing (to which I refer at the end of this judgment) the claimant sought to apply section 38(2) to himself, because he said a lack of capacity was alleged of him in relation to the application in 2015 to exhume the body of his late father. Even if that were true, it would not show that he lacked mental capacity for the purposes of the section 38(2) at the time of the application. Moreover, and as I have already said, the claimant has not filed a reply to plead any reliance on the provisions of the Limitation Act extending time limits. In any event, the factual premise is wrong. As will be seen later, there was no suggestion in Mrs Jennifer Webster's application for exhumation that the claimant lacked mental capacity.

38. In English law, the cause of action for breach of contract is complete without proof of substantive loss: see *eg Gibbs v Guild* (1881) 8 QBD 296. However, the cause of action in the tort of negligence is not complete until the claimant has suffered actionable damage as a result of the breach of duty: see *eg Coburn v Colledge* [1897] 1 QB 702, CA. The date on which that happens is the date of the accrual of the cause of action. Where the claim is for negligent professional advice, the loss generally

occurs at the time that the client enters into the transaction in reliance on the advice, rather than when the transaction later goes wrong or produces an adverse result: *Forster v Outred & Co* [1982] 1 WLR 86, CA. However, the imposition of a wholly contingent liability does not amount to actual loss unless and until the contingency occurs: *Law Society v Sephton & Co* [2006] 2 AC 543, HL. It is also clear that where a lawyer advises negligently on a scheme to save inheritance tax, there is no claim in negligence for the deceased (because the liability to pay the tax is a liability which arises only on death), and therefore no such claim can pass into the estate, although, if there were, it would arise at the time that the advice was implemented: *Daniels v Thompson* [2004] EWCA Civ 307, [42], [59], [72].

Discussion

Paragraphs 7 and 8

39. I turn therefore to the application of the rules I have set out to the claimant's case before me. Paragraphs 7 and 8 make a number of claims. One is that the advice on estate planning given by a firm called Bevirs in February 1992 was wrong and that the defendants "administered it anyway causing loss and damage" to the estate of Captain Antony Webster (the claimant's grandfather). So far as the claim is not against the defendants it must fail anyway, because Bevirs are not a party. But even as against the defendants, it does not state a cause of action. Giving or administering "wrong" advice is not in itself a tort or any other cause of action. In any event, and most importantly, the acts and omissions complained of date from 1992, and even the "longstop" fifteen-year limitation period under section 14B had expired before the claim was issued. There must be summary judgment for the defendants in relation to this part of the claim.

Paragraphs 8.3 and 8.4

40. Another claim in paragraphs 8.3 and 8.4 is that the defendants would not claim agricultural property relief from inheritance tax on Captain Webster's estate and neither would they apply what is said to be the "protection" of the Trusts of Land and Appointment of Trustees Act 1996 for the benefit of the claimant's family. The failures were said in paragraph 8.4 to amount to fraud under sections 3 and 4 of the Fraud Act 2006. First of all, the pleading in paragraph 8.3 does not state a cause of action, *eg* it does not allege that the omissions were negligent and/or in breach of duty, giving particulars. Merely pleading that this amounts to the criminal office of "fraud" (without any particulars) does not improve matters. But again the fundamental problem is that the acts and omissions complained of date from the period after Captain Webster's death in 1996, and even the "longstop" fifteen year period had expired before the claim was issued. There must again be summary judgment for the defendants under this head.

Paragraphs 9 to 12

41. Paragraphs 9 to 12 claim that the mutual intentions of Captain Webster and his wife Valerie, including to confer life interests upon the claimant and his father Valentine, and an alleged "deal" among beneficiaries on the future of his farm were not implemented by "the wills and trust produced" by the defendants. The first problem for the claimant here is that the allegations in respect of the mutual intentions and the

alleged "deal" were made in two of the earlier proceedings involving the claimant and resolved against him. In the Original Claim HHJ Purle QC held that the proprietary estoppel claim advanced by the claimant on behalf of his father's estate wholly failed. As the judge put it, having regard to the structure put in place in 1992,

> "30 … That structure is wholly inconsistent with the estoppel claim. For that claim to succeed, I must find that Antony and Valerie did one thing, and told Valentine something different. Not only am I not persuaded that that was the case, but it is clear that all family members in fact knew what occurred in 1992, and (in due course) that Antony's will trust duly took effect in 1996. …"

Accordingly, there was no such mutual intention, nor any "deal" amongst the intended beneficiaries.

42. In addition, the claimant attempted to run the argument again in the Possession Proceedings before HHJ McCahill QC, in seeking permission to amend his statement of case in those proceedings. But the judge both struck out the remaining parts of the proceedings and also refused permission to amend. Accordingly, to entertain these allegations again in these proceedings would be to permit the collateral attack on earlier decisions.

43. But even if that were not so, once more the fundamental problem is that the acts and omissions complained of date from 1992 through to the period after Captain Webster's death in 1996, and even the "longstop" fifteen-year period had expired before the claim was issued. There must once again be summary judgment for the defendants.

Paragraphs 13 to 16

44. Paragraphs 13 to 16 plead Captain Webster's death on 10 February 1996, allege that the defendants failed to ensure any deal among Captain Webster's issue, and in July 1996 both falsely represented that life interests could not be created and gave negligent advice to Mrs Valerie Webster in a letter, which misled her into revoking her 1992 will by making a new one in September 1998 (itself "revised" by a further will of November 2000), so that the "mutual aims" of Captain and Mrs Webster were not carried out. Once again, the problem is that the acts and omissions complained of date from 1996 through to 2001, and even the "longstop" fifteen-year period had expired before the claim was issued. There must therefore be summary judgment on this part of the claim for the defendants. In any event, the claim on behalf of Mrs Valerie Webster's estate must also fail, for two distinct reasons. One is that the claimant has no standing to make it, not being her personal representative. The other is that her 1998 will was not her last will (that was the will of 2006) and so any complaints that the defendants obtained the revocation of the 1998 will could not be causative of any loss. There are other problems with this part of the case as well, but in the circumstances it is not necessary to deal with them.

Paragraph 17

45. Paragraph 17 is an allegation of reliance by the claimant on the alleged encouragement "to expect to own 'The Priory' farmhouse…" This claim must fail for the same reasons as given in relation to the claim under paragraphs 9 to 12 above,

namely that it amounts to a collateral attack on decisions made in the Original Proceedings and the Possession Proceedings, and in any event the acts complained of took place so long ago that they are now statute barred under section 14B, if not under section 2.

Paragraphs 18 and 19

46. Paragraphs 18 and 19 deal with an offer in July 2005 by the first defendant to retire as executor and trustee of Captain Webster's will, which was not implemented, even though the first defendant had allegedly lost the confidence of Mrs Webster and her children. But these allegations do not amount to an allegation of the tort of negligence, or indeed any other tort, and must therefore fail. In addition, the acts and omissions complained of took place more than 15 years before this claim was issued, and are accordingly caught by section 14B of the 1980 Act. There must therefore be summary judgment in favour of the defendants.

Paragraphs 20-22 and 24

47. Paragraphs 20-22 and 24 deal with the attempt in 2005 by Mrs Valerie Webster to instruct another solicitor to prepare a codicil to her will and the preparation by the defendants of a further will of Mrs Webster dated 24 May 2006, revoking her will of 2000. This will had appointed the claimant's father as an executor and trustee, but the 2006 will appointed the first defendant instead, it is said on the basis that the claimant's father was then suffering from motor neurone disease. The claimant says that this was contrary to the United Nations Convention on the Rights of Persons with Disabilities. The claimant pleads an attempted revocation by Mrs Webster of the May 2006 will by a further will and letter in September 2006.

48. This part of the claim is wholly inconsistent with, and therefore amounts to a collateral attack on, the decision in the Original Claim to admit the 2006 will to probate in solemn form, and the finding that Mrs Webster knew and approved the contents. In his judgment, the judge said this:

> "49. Mr Penley confirmed that this was an accurate attendance note. He also explained in an affidavit that he made on 1st June 2006 that he explained the Will in considerable detail including taking her through the Will line by line for the relevant clauses. I accept that evidence. No-one has challenged Valerie's capacity at this time. That is, of course, a separate question of whether she knew and approved of the contents of this Will. The evidence before me was that Valerie not merely had sufficient capacity but was generally in full possession of her mental faculties right up to the day she died, despite her great age (98 when she made the 2006 Will). She was a strong-willed lady perfectly capable of making up her own mind. Moreover, the same attendance note reveals that she raised with Mr Penley intelligent questions concerning tax penalties.
>
> 50. I have no doubt that Valerie knew and approved of the contents of the 2006 Will. It makes no difference that the instructions to Mr Penley came from Rory. Rory was her son and she trusted him to pass on her wishes. Likewise, it makes no difference that Rory and Virginia were both present. That was Valerie's wish. What matters is that the contents were fully explained to her, and that she

> understood the Will, which I am satisfied she did. The Will was a rational response to the dilemma that Valentine might well die before her.
>
> 51. It is said that she gave different instructions to another solicitor, Mrs Booth, not long previously (initially in mid to late 2005, and then again in early 2006). Mrs Booth declined to carry out those instructions, as she did not feel it appropriate for Valerie to be completing any fresh documentation in view of her great age and current health. I leave aside the period immediately following Valentine's death, dealt with later. As capacity is not challenged before me, this point is of minimal relevance. The fact that she made different dispositions in the events which happened is not that unusual or remarkable. Old people commonly do change their wills. Anyone can change their mind from one month to the next, or even from one day to the next.
>
> […]
>
> 55. In all the circumstances, I pronounce in favour of the validity of the 2006 Will."

Accordingly, this part of the claim must be struck out as an abuse of process.

Paragraphs 23 and 25 to 27

49. Paragraph 23 pleads the claimant's father's death on 16 September 2006, and paragraph 25 pleads the death of Mrs Webster in August 2007. The defendants admit both. Paragraph 26 pleads that on 2 June 2008 the defendants wrote to the claimant's mother Jennifer "to confirm the inheritance position on Valerie's [the grandmother's] estate". Paragraph 27 alleges that the defendants did not remain neutral, "by proactively litigating against the [claimant's] family…" None of these paragraphs, singly or taken together, makes allegations amounting to professional or any other kind of negligence, nor indeed to any other cause of action. They should be struck out.

Paragraph 28

50. Paragraph 28 alleges a breach of the second defendant's contract of retainer on 22 July 2014 by completing Panel 12 in the Form FR1 relating to the registration of The Priory incorrectly, with alleged knowledge of the misstatement in question, namely that only the first defendant "is in actual possession of the property…". Paragraph 29 refers to this as a "fraudulent title registered at Land Registry". So far as there is an allegation of breach of contract, any such cause of action, having accrued on or before 22 July 2014, would now be barred by section 5 of the Limitation Act 1980. Any cause of action in tort would also have arisen on the same date, as being the date of registration, and therefore when any damage would be suffered. That would be barred by section 2 of the Limitation Act 1980. In the circumstances I do not think I need to decide whether there would have been any real prospect of successfully showing negligence or breach of contract on the facts, although, for the reasons set out in paragraph 52 of the Defence, my present view is that there would not. I must give summary judgment to the defendants on this part of the claim.

Paragraph 29

51. Paragraph 29 goes on to allege that the defendants illegally seized the claimant's possessions and wrongfully evicted him and his children without consent or a court order, which it is said was an offence under the 1996 Act. These are matters dealt with in both the Possession Proceedings and the Trespass and Injunction Proceedings, and this part of the claim is therefore an attack on the findings of DDJ Orme (who struck out an allegation that the claimant had a tenancy in relation to The Priory) and of HHJ McCahill QC (who struck out the rest of the proceedings) in the former proceedings and of HHJ McCahill QC in the latter, and amounts to an abuse of process. This part of the claim should therefore be struck out.

Paragraph 30

52. Paragraph 30 alleges that the "illegally obtained title was used to obtain [the claimant's] wrongful arrest by the Police". This does not however state a cause of action against the defendants, and should also be struck out.

Paragraphs 31 and 32

53. Paragraphs 31 and 32 deal with the possession proceedings brought (successfully) by the first defendant and Virginia Ashcroft against the claimant in respect of The Priory, and the later sale by them of the property to a third party. These paragraphs also make no claim against the defendants and should be struck out.

Paragraph 33

54. Paragraph 33 alleges that the defendants "failed to take proper care in an application to the Home Office" for the exhumation of the claimant's father's remains from the property. This paragraph does not state a cause of action. For example, it does not plead any loss. Moreover, the particulars of the failure to take proper care are that the defendants "approv[ed] a false statement that [the claimant] suffers from mental illness that means that [the claimant] should not be informed of a family matter." A copy of the application for exhumation contained in the bundle provided to the court by the claimant shows that in fact the application was made to the Ministry of Justice, but more fundamentally was not made by the defendants at all. It was made by Mrs Jennifer Webster, the claimant's mother. Nor did it state that the claimant suffered from "mental illness". It said that he was against the sale of the property and would do everything in his power to stop it. It further said he was "mentally unstable over all of this", and it would be better not to inform him of the application. Thus, even if a complete cause of action had been alleged by this paragraph, I would have granted reverse summary judgment on the basis that there is no real prospect of the claimant succeeding on this part of his claim.

Paragraph 34

55. Paragraph 34 pleads that the second defendant retained the proceeds of sale of The Priory, and also that Virginia Ashcroft brought a claim against the first defendant which was not notified to the claimant, his mother or his children. A copy of the claim form, sealed on 20 August 2019, was included in the claimant's bundle before me. The claim was one under CPR Part 8 for the first defendant to be removed as executor of Valerie Webster's estate under section 50 of the Administration of Justice Act 1985. The claimant was not a party to the claim, and there was no legal requirement

that he should be one. Neither of these allegations can amount, without more, to a cause of action against the defendants, and this paragraph should be struck out accordingly.

Paragraph 35

56. Lastly, paragraph 35 pleads the loss and damage allegedly suffered by the claimant and "the aforesaid St John Webster family". So far as the claimant is seeking to make a claim on behalf of "the aforesaid St John Webster family", there is no clarity as to exactly what that term means, but, even if there were, the claimant has no standing to make such a claim. It is nowhere stated, for example, that the claimant is making any of his claims in any representative capacity, such as the capacity of personal representative of a named person's estate. As stated in paragraph 1 of the particulars of claim, the claimant claims as "an intended beneficiary under the 6 April 1992 Trusts & Will of Anthony St John Webster … and under a Trust, Settlement & Will of Valerie St John Webster …" That means that there is no standing to make the claims stated in paragraphs 35.1.1 to 35.1.5 and 35.1.8 to 35.1.10, except so far as concerns the claimant himself personally.

57. So far as the claim is being made on behalf of the claimant himself, the various heads of claim encounter several difficulties. The first and most obvious is that the preceding paragraphs of the particulars of claim either state no cause of action (see paragraphs 23, 25-27, 30-34) or those paragraphs should be struck out (see paragraphs 20-22, 24, 29) or reverse summary judgment should be given against the claimant in respect of them (see paragraphs 7-19, 28). Accordingly, the particulars of loss cannot take the matter any further. To put the matter another way, you cannot turn something which is not a claim in law into such a claim by saying that you have suffered a loss in respect of it (except in the case where allegations not amounting to a claim in tort are completed by an allegation of loss, which is not the case here). Nor can you turn a claim which has been struck out or in respect of which summary judgment has been given against you into a claim which has not been struck out or has not had summary judgment given in respect of it, by saying that you have suffered a loss in respect of it.

58. But there are other difficulties as well. As to paragraph 35.1.1 (loss of agricultural property relief to Mrs Valerie Webster's estate, in the sum of £61,594.99), I was told by counsel at the hearing that the claimant's one-twelfth interest in that estate has long been exhausted by costs orders made against the claimant arising from the earlier litigation, and a one twelfth share in an additional £61,594.99, being £5,133, would equally have been used up.

59. As to paragraph 35.1.2 (loss of occupation of part of The Priory and loss of the "mutual intentions" of Captain and Mrs Webster), the decisions in the earlier proceedings make clear that the claimant had no such right of occupation and there were no such enforceable "mutual intentions".

60. As to paragraph 35.1.3 (unlawful eviction) this was the subject of the Possession Proceedings which were struck out as totally without merit.

61. As to paragraph 35.1.4 (unpaid works on the property in the 1980s), the claimant showed me the invoices concerned, but not only was the work alleged to have been

done by the claimant's father, but the work was done in the period from the 1980s to 2006, and any claim is accordingly statute barred under section 5 of the 1980 Act.

62. As to paragraph 35.1.5 (loss of reasonable financial provision), this appears to relate to possible claims against Captain Webster's estate under the Inheritance (Provision for Families and Dependants) Act 1975. However, such claims must be made within six months of probate being obtained, and are now long out of time. Moreover, at no time since the death of Captain Webster in 1996 has the claimant attempted to make such a claim.

63. As to paragraph 35.1.6 (loss of the claimant's Maidenhead flat in 2001), the judgment of HHJ Purle QC in the Original Claim said:

> "23. … In my judgment, no representation or promise to the effect suggested by Rupert was ever made. Nor, if I am wrong about that, was there detrimental reliance."

Hence the decision of the claimant to sell the flat was his own.

64. As to paragraph 35.1.7 (loss of earnings as a result of DJ Million's order of 24 March 2009), this is the opportunity cost to the claimant of litigating (and losing) the Original Claim. It is therefore not recoverable in any event.

65. As to paragraph 35.1.8 (loss of registration of rights in The Priory), the decisions in the earlier proceedings make clear that the claimant had no such right capable of binding the property and therefore capable of registration. He has therefore lost nothing in this respect, and it would be a collateral attack on the findings of the court to allow this paragraph to stand.

66. As to paragraph 35.1.9 (loss of right to purchase The Priory), the judgment of HHJ Purle QC in the Original Claim made clear that there was no promise of any such right. Accordingly, this paragraph is a collateral attack on that finding, and must be struck out.

67. As to paragraph 35.1.10 (loss of "legal and beneficial ownership" of Captain Webster's "trust land" since 1996) the decisions in the earlier litigation mean that the claimant never had any right to such a thing. Accordingly, this paragraph too is a collateral attack on that finding, and must fail.

68. As to paragraph 35.2 (loss of "goodwill"), this discloses no recoverable loss.

69. As to paragraph 35.3 (court costs since DJ Million's order of 24 March 2009), the court orders made against the claimant in the litigation so far are decisions of the various courts involved, as a result of the conduct of the claimant himself, and cannot be recovered in these proceedings.

70. As to paragraph 35.4 (the claimant's divorce from his wife), the loss alleged is too remote to be recoverable.

71. As to paragraph 35.5 (loss of the claimant's "family burial ground"), it is difficult to see how the grave of the claimant's father in the grounds of The Priory can amount to a "family burial ground", let alone *the claimant's* "family burial ground". In any

event, on the material before me, there is no real prospect of the claimant establishing that any such "loss" was the responsibility of the defendants, rather than of the claimant's mother, Jennifer Webster, who actually applied for the exhumation licence. But the reality is that, if and to the extent that this is a loss of the claimant, it adds nothing to his alleged losses of rights in The Priory, already discussed above. There is no separate basis for saying that this represents a loss of the claimant.

Opportunity to amend?

72. I have considered whether, in respect of the paragraphs in the particulars of claim (23, 25-27, 30-34) which are liable to be struck out for failing to state complete causes of action, I should offer an opportunity to the claimant to amend his case so as to plead proper causes of action, as in *Kim v Park* [2011] EWHC 1781 (QB), discussed earlier. That of course was a case where the defect, though important, lay within a modest compass, and the claimant both explained at the time why it had not been corrected, and then subsequently provided the court with the material with which it could be corrected.

73. This case is quite different. First of all, I have held that most of the claims in this negligence action fail anyway, for other reasons, either because of limitation or because of abuse of process. So far as concerns the remainder, the years of litigation that the claimant has indulged in, using enormous quantities of scarce judicial resources, with no substantive success so far, and in the process exhausting his own entitlement to share in the family wealth in pursuit of a greater share at the expense of his other relatives, and the number of extended civil restraint orders made against him, demonstrate that the claimant simply cannot process his lack of success as due to a lack of merits according to law (rather than according to his personal sense of what would be right).

74. These are claims which, if they had any merits, should have been brought years ago. Correspondingly, the claimant has had years to consider how to frame his claims, and has had substantial assistance from pro bono counsel. Moreover, he has had the defendants' application to strike his claim out since early August, and has made no suggestion, let alone any attempt, to correct the defects. Here we are now in December, four months later. In my view, given the claimant's obsession with his claims, I do not consider that he is in any position rationally to correct the defects in his pleaded case, and I see no sufficient reason to leave this serious professional negligence claim hanging any longer over the heads of the defendants by giving him a further opportunity to attempt to do so.

Conclusion

75. The overall conclusion to which I have come is that the whole of this claim fails, either because it is liable to be struck out, or because I should give summary judgment to the defendants. I will deal with consequential matters in the first instance in writing. Each party should let me have its submissions by email by 4 pm on Friday 17 December 2021, and its submissions in reply to those of the other side by 4 pm on Tuesday 21 December 2021. I will then decide whether there needs to be an oral hearing, or otherwise what consequential orders I should make.

76. I should here add that, after I had reserved judgment on 2 December 2021, but before I had finished preparing this judgment, the claimant sent me a further submission in the form of a letter dated 6 December 2021, which I ensured was copied to the other side. On 13 December 2021 Mr Webster sent me a further letter submission, this time copied to the other side. Strictly speaking these further submissions are too late. There must be finality in argument, as in litigation, otherwise arguments might never be concluded. But by that stage the decision had not yet been handed down, and, partly because the first of them was sent only a few days after the hearing, and partly because both were short, but without deciding whether it was proper for me to do so, I have looked at them before reaching my decision. In fact, they made no difference.

Postscript

77. I have to record that, after I had circulated this judgment in draft on 13 December 2021, seeking suggestions for corrections are obvious errors, I received two further emails from the claimant, one timed at 17:21 on 13 December 2021 and one timed at 19:23 on the same day. The earlier email thanked me for my judgment, but continued: "An obvious omission is my interim reply dated 2 December 2021, which was filed and served on both parties, and I enclose a copy". The second made further, more detailed arguments. Until I received that first email, I had not been aware that the claimant had even prepared, let alone filed and served a reply. The claimant had not referred to any such reply at the hearing, even when the defendant's counsel pointed out that no reply had been served. Nor did the claimant express any intention of preparing one, so that the propriety of doing so could be addressed.

78. Having now checked CE file, I can see that the one-page "Interim Reply" to which the claimant referred me was submitted electronically at 11:42 on the 3 December 2021, and filed electronically some 30 minutes later. This was of course the day *after* the hearing of this application, and after I had reserved my judgment. At 17:58 on 13 December 2021 the defendant's counsel sent an email to me objecting to my taking into account this further document as a matter of principle. But he also submitted that in any event all that the document did was to repeat points made by the claimant during his oral submissions.

79. In my judgment, it is far too late for the claimant to be filing further statements of case, long out of time and without permission. There really has to be an end to the argument, or no decision would ever be reached. The claimant had the same opportunities to take advice, to file statements of case in accordance with the rules, and to make arguments at the hearing as any other litigant, whether in acting person or represented. He has taken full advantage of all three. It is quite wrong for him to try to correct an omission (if that is what it was) and seek to gain a procedural advantage after the hearing is over and the court has reserved its judgment.

80. In any event, however, I have looked at the reply, in order to see whether it would have made any difference if it had been filed and served at the correct time. In my opinion it would not. All of the points which it seeks to make were made either in written or oral submissions at the hearing of this application. The only paragraphs which bear upon the limitation defence are paragraphs 2 and 8. Both deal with dates of knowledge by the claimant of material and other facts needed to know that an action might be brought. But section 14A(4)(b) of the Limitation Act 1980 provides for a limitation period of three years from the date of knowledge (if that is longer than

the usual six-year period). In paragraph 2 it refers to knowledge obtained in 2012, and in paragraph 8 to knowledge obtained in 2015. Accordingly this pleading cannot assist the claimant. My judgment stands.

81. A further matter which I should mention is that at 16:14 on 14 December 2021 the claimant electronically submitted an application to the court via CE-File for an extension of time in which to file a reply. This was filed electronically (and thus made available to court staff) at 10:15 this morning. I have read the application notice, which contains the evidence on which the claimant relies in box 10. He refers to the decision of Morgan J in *Rind v Theodore Goddard* [2008] EWHC 459 (Ch). That was a decision on different facts. In particular, the judge held that the limitation periods in that case had not expired by the time the claim was issued. I am satisfied that, for the reasons already given, the intended reply would make no difference to my decision. Accordingly, I have decided not to delay the handing-down of this judgment in order first to deal with this latest application. It will be overtaken by my order.

82. Lastly, at 12:46 today, the claimant sent me what he called "a copy illustrating major errors and corrections" for me to consider making in my draft judgment. I had asked for these by 4 pm yesterday, so that I could hand down this judgment in final form at 2 pm today (as stated in the email sending out the draft judgment and in the header to the draft judgment itself. The defendants complied with my request. The claimant however did not. Moreover, what the claimant has done is not to provide a list of corrections, but to interleave his suggested corrections to my draft judgment. Indeed, many of these are simply comments on, substantial additions to or even rewrites of portions of my judgment

83. As a result, what was sent as a 55-page document (in double-spacing) has come back to me as a 69-page document. I am afraid that the courts cannot operate on the basis that parties are free to contribute whatever arguments they like whenever they like. Nor should the opportunity to suggest the correction of spelling and other minor errors be treated as an opportunity to re-argue the case (as paragraph 21.108 of the Chancery Guide makes clear), let alone to rewrite the judge's judgment. The rules are there to provide some certainty to everyone, to promote efficiency, and above all to give parties the same opportunities, so that the process is fair. I have looked through the corrections and additions that the claimant suggests, but decline to accede to any of them. As a result of this extra work, this judgment is being handed down later than I had intended. I am sorry about that.